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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,882	12/20/2004	Anteo Pelliconi	MI 6029 (US)	5313
34872	7590	10/23/2008		
Basell USA Inc. Delaware Corporate Center II 2 Righter Parkway, Suite #300 Wilmington, DE 19803			EXAMINER NUTTER, NATHAN M	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			10/23/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/518,882

**Applicant(s)**

PELLICONI ET AL.

**Examiner**

Nathan M. Nutter

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-9 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 08-08

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The Information Disclosure Statement, filed 14 August 2008, has been considered but the citations thereon are not being entered. Those citations are Official Actions from copending applications. The PTO Form 1449 does not provide for such disclosures. The documents are not patents, foreign patents nor non-patent literature, as indicated on the form, which literature has a publication date, an author, a title, a date, and other necessary information that one may easily find in a library or other such depository. Further, the citations are not necessary, and moreover, redundant, since the Examiner has full access to the copending applications, including all entries and Office Actions through the "electronic Desktop Application Navigator" (eDAN) system. Further, the citation thereof may adversely affect the prosecution in any copending application whose Office Action(s) may be cited that issue at a later date than the instant application, should it mature into a patent. Finally, applicants have shown no bases in either statute or the Manual of Patent Examining Procedure that either allow or require such citation be made on a PTO Form 1449.

### ***Response to Amendment***

In response to the amendment filed 14 August 2008, the following is placed in effect.

The provisional rejection of claims 7-9, only, on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending

Application No. 10/499,182 (US 2006/0047071), Pelliconi et al, is hereby expressly withdrawn.

The provisional rejection of claims 7-9, only, on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14-26 of copending Application No. 10/577,270 (US 2007/0078224), Dominic et al, is hereby expressly withdrawn.

### ***Allowable Subject Matter***

Claims 7-9 are allowed.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 and 10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/499,182 (US 2006/0047071), Pelliconi et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents may overlap for the crystalline propylene copolymer and the copolymer blend as to compositional limitations and monomeric contents. The compositions may have identical characteristics.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-6, 10 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14-26 of copending Application No. 10/577,270 (US 2007/0078224), Dominic et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents may overlap for the crystalline propylene copolymer and the copolymer blend as to compositional limitations and monomeric contents. The compositions may have identical characteristics. Even when the third constituent is included, the compositions may be identical since the instant claims do not exclude other components.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Response to Arguments***

Applicant's arguments filed 14 August 2008 have been fully considered but they are not persuasive.

In regard to the provisional rejection of claims 1-6 and 10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/499,182 (US 2006/0047071), Pelliconi et al, it is pointed out to applicants that the disclosure of a pending application may, indeed, be reviewed to understand the scope of the metes and bounds of the claims appended thereto. Further, only claims 1-10 were rejected over the document previously, not 1-11. The Examiner, upon reconsideration, decided to include the rejection thereover, since the instant claims recite "comprising," which would not exclude the other constituents employed in the copending application. Further, the crystalline polypropylene herein is embraced at 55 to 80%, and both contain "up to 15%" of ethylene or other C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s), and the ethylene copolymer recited herein is copolymer (b) of the copending application. The MFR of the instant application certainly is embraced by the copending application. Claim 3 of the copending application shows the intrinsic viscosity that embraces that recited herein. The fact that there are so many points of overlap is clearly indicative as to the obvious nature of the instant application.

With regard to the provisional rejection of claims 1-6, 10 and 11 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 10/577,270 (US 2007/0078224), Dominic et al, the

recitation of claims 1-26 was an obvious typographical error. It is pointed out, the crystalline polypropylene herein is embraced at 55 to 80%, and both contain "up to 5%" of ethylene or other  $C_4$ - $C_{10}$   $\alpha$ -olefin(s), and the ethylene copolymer recited herein is copolymer (b) of the copending application. The MFR of the instant application certainly is embraced by the copending application. The copending application shows the intrinsic viscosity that embraces that recited herein. The fact that there are so many points of overlap is clearly indicative as to the obvious nature of the instant application.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/  
Primary Examiner, Art Unit 1796

nmn

21 October 2008